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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/846,544	05/01/2001	Michael Hollatz	00EC065/79244	4119
24628	7590	11/04/2004	EXAMINER	
WELSH & KATZ, LTD 120 S RIVERSIDE PLAZA 22ND FLOOR CHICAGO, IL 60606			GEORGE, KEITH M	
			ART UNIT	PAPER NUMBER
			2663	

DATE MAILED: 11/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/846,544	HOLLATZ, MICHAEL	
	Examiner	Art Unit	
	Keith M. George	2663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 May 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/1/01</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because the abstract should avoid using phrases which can be implied, such as, "This disclosure concerns," "The disclosure defined by this invention," "This disclosure describes," etc. The abstract should also avoid stating that it is provided to comply with the rules requiring an abstract or that it will not be used to limit the scope of the claims. Correction is required. See MPEP § 608.01(b).
2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 5 and 38 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The data processing device was not described in the specification to comprise a computer, a laptop computer, a personal digital assistant and a cellular telephone.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3-10, 15, 17, 18, 20, 21, 23-28, 31-33, 36-40, 44-50, 52, 54, 55 and 57-59 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaffer et al., U.S. Patent 6,707,821, hereinafter Shaffer.

7. Referring to claims 1, 31, 44-47 and 57, Shaffer teaches in figure 1 a portion of a device, e.g., implemented on a computer, that multiplexes VoIP packets and other data packets onto a common data link using a priority queuing mechanism. The VoIP packets are created by digitally encoding a voice capture channel using an analog to digital converter and a voice encoder. Data packets are received from other applications running on the computer, e.g., a web-browser, e-mail application, or networked file system application (receiving data packets from data processing device) (column 1, lines 50-59). In figure 1, data packets pass through an optional data packet fragmenter, which segments large data packets into sequences of smaller data packets before submission to the queue (dividing the data packets into divided data packets) (column 1, lines 62-66). The packet scheduler multiplexes packets from the queues to the data link interface (interspersing the divided packets among the voice packets and sending the data packets and the voice packets to a communication network) (column 2, lines 5-6).

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8. Referring to claim 5 and 48, Shaffer teaches the method described in reference to claims 1 and 44 above where it was clearly shown that the method operates on a computer (column 1, line 51).

9. Referring to claims 6-9, 15, 20, 21, 25-27, 32, 49, 50, 55 and 58, Shaffer teaches the method described in reference to claims 1, 31 and 44 above and also teaches that the scheduler selects time-critical packets from queue 28 (the Voice Packet queue) until queue 28 is emptied (voice packets have a higher priority than data packets and are processed before the data packets, the priority is assigned based upon how the packets are processed and preference is given to voice packets) (column 2, lines 5-7).

10. Referring to claims 10, 18, 28, 33 and 54, Shaffer teaches the method described in reference to claims 1, 15, 20, 31 and 44 above and also teaches that the network is an Internet Protocol network (column 1, lines 34-37).

11. Referring to claim 17, Shaffer teaches the method described in reference to claim 15 above where it was clearly shown that the method operates on a computer (column 1, line 51).

12. Referring to claims 36 and 59, Shaffer teaches the method described in reference to claim 1 above and as shown in figure 1, data link 38 is clearly a two-way path. The network described is clearly a two-way network that can both transmit data or receive data from another source.

13. Referring to claim 38, Shaffer teaches the method described in reference to claim 36 above where it was clearly shown that the method operates on a computer (column 1, line 51).

14. Referring to claim 39, Shaffer teaches the method described in reference to claim 36 above and also teaches that the scheduler selects time-critical packets from queue 28 (the Voice Packet queue) until queue 28 is emptied.

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15. Referring to claim 40, Shaffer teaches the method described in reference to claims 36 above and also teaches that the network is an Internet Protocol network (column 1, lines 34-37).

16. Referring to claim 56, Shaffer teaches the method described in reference to claim 1 above and also teaches that the VoIP packets are created by digitally encoding a voice capture channel, e.g., from a microphone or headset) (user interface) using an analog-to-digital converter and a voice encoder (column 1, lines 53-56).

17. Referring to claims 3, 4, 23, 24, 37 and 52, Shaffer teaches the method described in reference to claims 1, 20, 36 and 44 above and also teaches in figure 4 that the two data packets have been divided into 3 equal parts and 1 unequal part.

Claim Rejections - 35 USC § 103

18. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19. Claims 2, 11-14, 16, 19, 2, 29, 30, 34, 35, 41-43, 41 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaffer.

20. Referring to 2, 16, 22 and 51, Shaffer teaches the method described in reference to claims 1, 15, 21 and 44 above and also teaches in another embodiment that when a scheduler has difficulty scheduling a large data packet for transmission, the scheduler may submit the packet to a fragmenter for fragmentation. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art that the if the size of a packet is too large, as determined by

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a threshold established in the scheduler, then the packet would be fragmented to help eliminate the scheduling difficulty (column 9, lines 9-14).

21. Referring to claims 11-14, 19, 29, 30, 34, 35, 41-43 and 53, Shaffer teaches the method described in reference to claims 1, 15, 20, 31, 36 and 44 above and also has clearly taught that the network is an Internet Protocol network (column 1, lines 34-35). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art that the Ethernet protocol is used in networks using the Internet Protocol. One of ordinary skill in the art would have been motivated to use the Ethernet Protocol on an Internet Protocol network is a well-known industry practice.

Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Flanagan, U.S. Patent 4,100,377, teaches the packet transmission of speech.
- b. Tsztoo et al., U.S. Patent 6,639,915, teaches the method and apparatus for transmission of voice data in a network structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith M. George whose telephone number is 571-272-3099. The examiner can normally be reached on M-Th 7:00-4:30, alternate F 7:00-3:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571-272-3126. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Keith M. George
29 October 2004



CHAU NGUYEN
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600